

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PLANNED PARENTHOOD FEDERATION  
OF AMERICA, INC., et al.,

Plaintiffs,

No. C 03-4872 PJH

v.

**ORDER DENYING DEFENDANT'S  
DISCOVERY MOTIONS**

JOHN ASHCROFT,

Defendant.

Before the court are the government's motions to compel discovery and for leave to take additional depositions and to extend time for the completion of additional depositions. Having reviewed the papers, the declarations and exhibits, and having considered the relevant legal authority and the parties' arguments, for the reasons stated on the record on March 5, 2004, this court DENIES the government's motions.

Through the instant motions, the government sought to compel production of individual patient medical records from plaintiffs Planned Parenthood Federation ("PPFA") and Planned Parenthood Golden Gate ("PPGG"), from intervenor City and County of San Francisco ("CCSF"), and from PPFA affiliates located throughout the country. While the status of the government's requests differed for each provider,<sup>1</sup> the government generally sought to compel the same four categories of records from each. These included: (1) records of "partial-birth abortions" or PBAs, as defined by the government; (2) records of abortions involving the use

<sup>1</sup>In response to the government's discovery requests, at the time of hearing, PPFA had produced seventeen patients' medical records concerning complications and/or malpractice claims arising from post-sixteen week abortions, over the course of a one-year period. PPGG produced patient medical records for all forty-eight post-sixteen week abortions performed at PPGG over the past three years.

1 of chemical injections to effect intrauterine fetal demise; (3) any abortions during which  
2 complications arose; and (4) documents related to medical malpractice claims arising out of  
3 the performance of PBAs. PPFA, PPGG, and CCSF opposed the motions on relevance,  
4 hardship, and privacy grounds. PPFA also objected as to timeliness, and contended that its  
5 affiliates' records were not in its "possession, custody, or control" pursuant to Federal Rule of  
6 Civil Procedure ("FRCP") 34(a).

7 While the court's reasons are more fully stated on the record, the court will briefly  
8 summarize its denial of the government's motions. The court finds that the government's  
9 motions should be denied as irrelevant, unduly burdensome, and based on a balancing of the  
10 individual patients' right to privacy with the government's interest in disclosure. The court  
11 further finds that any of these three bases alone would have been sufficient to deny the  
12 government's motion.

13 Based on the declarations submitted by the plaintiffs and CCSF, and the court's review  
14 of the sample medical record submitted under seal, this court finds that the individual medical  
15 records are not relevant because they do not contain the information that the government  
16 seeks. Moreover, even if the records did contain such information, they are marginally  
17 relevant at best because the presence or absence of medical risks and their likelihood and  
18 nature are going to be made not on the basis of individual patients' records but on the basis of  
19 expert testimony at trial.

20 Additionally, the court finds that the government's requests are unduly burdensome.  
21 The declarations in opposition to the government's motions set forth the tremendous burden  
22 on plaintiffs and CCSF. Given the marginal probative value, the short time frame before trial,  
23 the enormity of the requests, and the privacy considerations addressed below, the court finds  
24 the requests pose an undue burden on the providers.

25 Furthermore, while recognizing that "[t]he right to informational privacy . . . is not  
26 absolute" but "is a conditional right which may be infringed upon a showing of proper  
27 governmental interest," the court concludes that a balancing of the relevant considerations

1 supports nondisclosure. See *In re Crawford*, 194 F.3d 954, 958 (9<sup>th</sup> Cir. 1999)(citing *United*  
2 *States v. Westinghouse Electric Corp.*, 638 F.2d 570, 577-78 (3<sup>rd</sup> Cir. 1980)).

3 Although the government has agreed to the redaction of names, addresses, birthdates,  
4 and other objectively identifying information, the records nevertheless contain other potentially  
5 identifying information of an extremely personal and intimate nature, including, among others,  
6 types of contraception, sexual abuse or rape, marital status, and the presence or absence of  
7 sexually transmitted diseases. Moreover, the potential for injury to the relationship between  
8 patient and provider is significant given the providers' pledge of confidentiality. As set forth in  
9 the amicus brief filed by the California Medical Association, allowing disclosure of the records  
10 will have a chilling effect on communications between patients and providers. It is also  
11 particularly troubling that under the circumstances of this case, it is unlikely that the individual  
12 patients whose records are being produced would have notice or an opportunity to contest  
13 disclosure. Accordingly, on balance, this court cannot conclude that the government's interest  
14 in the marginally relevant patient records justifies disclosure.

15 This court therefore DENIES the government's motions to compel.<sup>2</sup> Moreover, the  
16 government has agreed that given this court's denial, its request for additional depositions is  
17 moot. Accordingly, it is DENIED. For the reasons stated on the record, the court, does,  
18 however, GRANT the government's request for malpractice records from CCSF to the extent  
19 that such information has not already been provided.

20 Additionally, the government has informed this court that it has subpoenaed documents  
21 from non-party PPFA affiliates pursuant to Rule 45. In recognition of other similar  
22 proceedings and that other courts may be presented with related motions to quash, this court  
23 strongly encouraged the government to withdraw those subpoenas in the interest of judicial  
24 time and resources, advising that the information sought by the subpoenas is subject to the  
25 same concerns as the requests currently before this court and will likely be inadmissible at

---

26 <sup>2</sup>The court overruled plaintiffs' timeliness objections, and also noted that a ruling on  
27 plaintiffs' Rule 34(a) objection would require further factual development.

1 trial. See, e.g., *Dart Industries v. Westwood Chemical Company*, 649 F.2d 646, 649-650  
2 (9<sup>th</sup> Cir. 1980)(discovery restrictions may be broader where nonparty is target of discovery  
3 and may be “more limited to protect third parties from harassment, inconvenience, or  
4 disclosure of confidential documents”).

5 This order fully adjudicates the matters listed at nos. 102, 103, 104, 105, and 126 on  
6 the clerk’s docket for this case. PPFA’s request to seal document #126, the sample medical  
7 record, is GRANTED.

8  
9 **IT IS SO ORDERED.**

10  
11 Dated: March 5, 2004

12 /s/  
13 PHYLLIS J. HAMILTON  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28